

# REPLACEMENT PRE-APPEAL BRIEF REQUEST FOR REVIEW

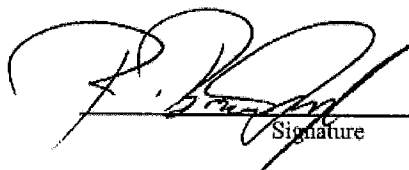
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PTO/SB/33 (07-05)

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| <b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>  |  | Docket Number (Optional)<br>U02-0208.39 |                  |                               |
| <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed Name _____</p>  | <p>Application Number<br/>10/604,982</p> | <p>Filed<br/>August 29, 2003</p>        |                  |                               |
| <p>First Named Inventor<br/>Findikli et al.</p>   |  |   |                  |                               |
| <table style="width: 100%;"> <tr> <td style="width: 50%;">Art Unit<br/>2617</td> <td style="width: 50%;">Examiner<br/>Ariel A. Balaoing</td> </tr> </table>   |  |   | Art Unit<br>2617 | Examiner<br>Ariel A. Balaoing |
| Art Unit<br>2617  | Examiner<br>Ariel A. Balaoing            |   |                  |                               |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).<br/>Note: No more than five (5) pages may be provided.</p>  |  |   |                  |                               |
| <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest.<br/>See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed.<br/>(Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.<br/>Registration number <u>55,130</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br/>Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: center;"> <br/>             _____<br/>             Signature<br/><br/>             R. Brian Drozd<br/>             _____<br/>             Typed or printed name<br/><br/>             919-286-8000<br/>             _____<br/>             Telephone number<br/><br/> <u>3/20/08</u><br/>             _____<br/>             Date           </div> </div> |  |   |                  |                               |
| <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>   |  |   |                  |                               |

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| <input checked="" type="checkbox"/> *Total of 1 forms are submitted. |
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REPLACEMENT REMARKS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|                  |                                  |   |                       |
|------------------|----------------------------------|---|-----------------------|
| Applicant:       | Findikli et al.                  | ) |                       |
| Serial No.:      | 10/604,982                       | ) | Confirmation No. 1981 |
| Filing Date:     | August 29, 2003                  | ) |                       |
| Examiner:        | Ariel A Balaoing                 | ) |                       |
| Art Unit:        | 2617                             | ) |                       |
| Attorney Docket: | U02-0208.39                      | ) |                       |
|                  |                                  | ) |                       |
| Title:           | METHOD AND SYSTEM FOR            | ) |                       |
|                  | REGISTRATION OF LICENSED MODULES | ) |                       |
|                  | IN MOBILE DEVICES                | ) |                       |

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants submit that the current and preceding office actions issued by the Examiner in the present application contain clear errors in the Examiner's rejections as well as omissions of one or more essential elements needed for a *prima facie* rejection under 35 U.S.C. § 103(a).

The present invention is related to methods, apparatus, and a mobile device for detecting the initial access of a software package that has been previously installed in the mobile device and registering its use. The claimed invention also includes the use of specific messages to accomplish this registration, and the collection of module parameters to aid in the process. The registration process occurs while the user uses the software so that registration is substantially transparent to the user.

The Examiner rejected claims 1-3, 5, 6, 8-11, 16-20, 26, 27, 29, 30, 32, 33, 36-39, 43, and 44 under 35 USC § 103(a) as being obvious in view of published U.S. Patent Application 2003/0224823 to Hurst et al. ("Hurst") in combination with published U.S. Patent Application 2002/0162016 to Colvin. For a proper rejection based on Section 103(a), the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143. All of these claims, either directly or through dependency, currently recite sending a registration message, "while allowing use of the licensed software package without requiring permission so that the registering of the licensed software package is substantially transparent to the user . . . ."

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Applicants reiterate their arguments with respect to Hurst in this regard. Hurst discloses a system in which *activation*, rather than *registration* is required. Such activation is NOT transparent to the user and requires a response from the server in order to unlock the content. Hurst repeatedly refers to an "attempt" to access the secured content, and further teaches that the user must agree that they wish to use the content. Such a process is clearly not transparent to the user and does not allow use of the content without requiring permission, thus teaching away from Applicants' claimed invention.

In the Advisory Action, the Examiner stated that an "automatic activation" in paragraph [0048] of Hurst is transparent to the user solely because there is "no additional user intervention." Applicants disagree. Even though no additional user intervention is required for the "automatic activation" in Hurst, the content must still be activated "when the user attempts to access the content and agrees he wants to use the content," and thus, the content cannot be used until activation is complete. See, for example, paragraphs [0047]-[0050] of Hurst. Because the user in Hurst must still wait for completion of the "automatic activation" to use the software, Hurst does not teach registering the licensed software "while allowing use of the licensed software package . . . so that the registering of the licensed software package is substantially transparent to the user . . . ."

In the final office action, the Examiner agreed that Hurst does not disclose sending a registration message "while allowing use of the licensed software package." However, the Examiner looked to Colvin for the teaching of this concept. Nevertheless, Colvin is no better than Hurst in this regard. Colvin requires a user to enter one authorization code to make software even partially operable. Colvin requires the *user* to contact a "software license compliance representative" for an additional authorization code before being permitted to take full advantage of the software. See, for example, paragraph [0017] of Colvin. In fact, during initial use of the software in Colvin, *the end user must contact an authorized representative* to obtain the appropriate authorization code or password. See paragraph [0029]. It is difficult to imagine a process that is less transparent and automatic, or that teaches further away from the recitations of Applicants' claims. The Examiner has pointed to language in paragraphs [0031] to [0034] of Colvin that refers to updating passwords or authorization codes automatically and transparently. However, these portions of Colvin are referring to periodic updates of

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authorization credentials, not the software itself, and these credentials are updated long after the software has initially been activated. Applicants' claims are specifically directed to a software package being "initially accessed." The teachings of Colvin are not applicable to such a situation.

The Examiner has rejected claims 7, 31, and 40 under 35 U.S.C. § 103(a) as being obvious in view of Hurst in combination with Colvin and in further in combination with U.S. Patent No. 5,148,472 to Freese et al. ("Freese"). These claims are each dependent from one of the claims discussed above. Since the Examiner looks to Hurst in combination with Colvin for the recitations of the base claims, claims 7, 31 and 40 are patentable over the combination of Hurst, Colvin and Freese for at least the same reasons discussed above.

As the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* Section 103 rejection or a *prima facie* obviousness rejection, it is requested that these claims be allowed to issue.

Respectfully submitted,

Date: 3/20/2008



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